

**WORKERS' COMPENSATION ADVISORY COUNCIL**

**MINUTES ~ MARCH 9, 2001 MEETING [10:00 A.M.]  
710 JAMES ROBERTSON PARKWAY  
HEARING ROOM, FIRST FLOOR  
ANDREW JOHNSON TOWER  
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Steve Adams, State Treasurer

Voting members in attendance:

Mr. Jack Gatlin [by proxy to Mr. Neeley]  
Mr. Dave Goetz  
Mr. James G. Neeley  
Mr. Bob Pitts [by telephone conference call]  
Mr. Othal Smith, Jr.  
Mr. Steven Turner [by proxy to Mr. Goetz]

Nonvoting members in attendance:

Ms. Jacqueline Dixon  
Mr. Jerry Mayo

Ex officio members in attendance:

Mr. Everett Sinor, Assistant Commissioner, Department of Commerce & Insurance  
[designee for Commissioner Anne Pope]

Also present:

M. Linda Hughes, Executive Director  
Mr. Dale Sims  
Mr. Dave Wilstermann, Research Analyst

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Mr. Adams called the meeting to order.

## OLD BUSINESS

### A. DISCUSSION/RECOMMENDATION re: SB1188 (Clabough) / HB619(Kisber)

Mr. Adams recognized Mr. Dale Sims who presented a summary of the recommendations received from Tillinghast and the Department of Commerce and Insurance to the Advisory Council members in a format where the Advisory Council could compare opinions to the same issue. The following table summarizes his presentation regarding the Tillinghast recommendations and the Department's position on each recommendation:

Tillinghast Recommendation	Department of Commerce Position
Continue Loss Costs System and consider modifications to rein in extreme competition and reduce excessive market fluctuations.	Current Level of Regulation is Appropriate
Modifications recommended by Tillinghast	Department's suggestions regarding Tillinghast recommended modifications [Concurrence with recommended modifications is not inferred.]
1. All filings below unity to be subject to prior approval filing with Department.	1. Use the bottom line multiplier, rather than the deviation from loss costs, to determine prior approval necessity. (Do not eliminate Department's ability to review filings on after use basis.)
2. Use system that authorizes Department to require any filing for a multiplier below 1.15 to be actuarially justified, supported and certified.	2. This would have limited impact on assuring rate adequacy. [If adopted, suggestion #1 would also apply.]
3. Develop system to timely monitor pricing activity, specifically geared toward monitoring the use and magnitude of scheduled credit programs.	3. The Department recommended instead the following: (a) require annual filing of multipliers, including a uniform filing date; (b) allow insurers to file more than once a year; and (c) allow new companies to file multiplier upon entry to the market.

Mr. Sims also summarized the Department's recommendations, which the Department stated should be considered irrespective of whether the Tillinghast recommendations are accepted:

- a) System should be changed to require inclusion of elements of concern such as scheduled rating, experience rating and small deductible credits within the mathematical equations used to derive the loss costs multiplier filing.
- b) Require annual filing of the loss costs multiplier used by an insurance company on a specific date.

Mr. Sims reported he had spoken with John Booth, the Tillinghast actuary, subsequent to the Tillinghast presentation to the Advisory Council. Mr. Booth indicated Tillinghast had also considered the following recommendations which they omitted from the formal report to the Advisory Council in February: (1) Limit application to companies where rate adequacy could be of great concern. (2) For multipliers below a given level - when insurer has filed a multiplier at or below the specified level, require the insurance company to file internal management quarterly reports with the Department to assure the insurer is monitoring the effect of the loss costs multiplier.

Mr. Adams then opened the floor for discussion. Mr. Mayo indicated his biggest concern is requiring prior approval of 300+ rate filings which will be made on March 1 because of staffing problems within the Department. He indicated this will slow down the process of getting the market in some sense of organization. This will also place Tennessee workers' compensation insurers in a non-competitive position with the surrounding states, none of which require prior approval. In addition, in his opinion, this will also make it more difficult for the companies who have capacity to write workers' compensation and do business in the State of Tennessee since capacity is the driving force which makes the market work. Mr. Mayo stated there is currently a limited amount of capacity so companies will go where they can realize the best return on their surplus and establishing barriers to companies doing business in Tennessee will probably make the market worse.

Mr. Mayo indicated the insurance industry would not object to the Department's first recommendation. He also stated an annual filing can be done and to require an actuary to certify the filing is good business sense and should be done. He questioned the logic of Mr. Booth's recommendation concerning internal management reports as these insurer prepared reports can also be manipulated. Mr. Mayo main concern is the State is not spending enough time on the financial requirements of some of the companies doing business in Tennessee and are not linking review of companies to a financial rating system, such as Best's. He stressed prior approval is a huge barrier to doing business in Tennessee. With regard to the issue of actuarial certification, he stated he felt all multiplier filings, not just those below 1.0, should be justified and certified.

Mr. David Broemel, representing the American Insurance Association, questioned whether the recommendations discussed would increase solvency regulation. He suggested there are other things which can be done to keep companies from going broke. Mr. Broemel stated he thought the current system seemed to be working well and he urged the Advisory Council to take actions which

will reduce costs and encourage competition. He also noted a specific problem in the Tennessee system had not been identified and how any of the recommendations made would help the situation. Mr. Broemel recommended no changes be made to the system.

After further discussion of these issues and the issue related to the assigned risk plan trigger percentage, the Advisory Council voted unanimously to make the following recommendations to the Joint Committee for inclusion in Senate Bill 1188/House Bill 619:

1. Continue the Advisory Prospective Loss Costs System, to include a sunset provision of 7-1-07, as SB1188 provides, to assure periodic review of the system.
2. Require each insurance company writing workers' compensation to file annually its loss costs multiplier, and supporting information on or before a date to be set by the Department of Commerce and Insurance.
3. Allow an insurance company to file a loss costs multiplier and supporting information more often than once per year.
4. Allow an insurance company new to the Tennessee market to file its loss costs multiplier and supporting information subsequent to the annual filing date established by the Department of Commerce and Insurance.
5. Require each insurance company to include additional elements in its loss costs multiplier filing which incorporates into the multiplier the impact of scheduled ratings, experience rating and small deductible credits.
6. Require each loss costs multiplier filing to be actuarially justified, supported and certified.
7. Direct the Commissioner of Commerce and Insurance to establish, by rule, criteria which will trigger additional review of an insurance company's filing and its financial viability. Require the proposed regulations to be submitted to the Workers' Compensation Advisory Council for review and comment prior to implementation and prior to any change to the regulations after initial implementation.
8. Extend for two years (from July 1, 2001 to July 1, 2003) the date for triggering operation of either the competitive state workers' compensation insurance fund (Title 50, Chapter 6, Part 6) or implementation of a plan of direct assignment of all assigned risk policies to insurers offering workers' compensation insurance if the Assigned Risk Plan does not continue to achieve population goals. Change the percentage population goal for the Assigned Risk Plan in TCA §56-5-314(c)(3) from 10% to 15%. [If the membership of the assigned risk pool, created pursuant to 56-5-314(c) exceeds 10% of the membership of the eligible employer market, as based on premium, excluding self-insured employers and self-insured groups, then the commissioner shall either activate the competitive state workers' compensation insurance

fund (Title 50, Chapter 6, Part 6) or implement a plan of direct assignment on a randomized basis of all assigned risk policies to insurers offering workers' compensation insurance.]

## NEW BUSINESS

Ms. Linda Hughes, Executive Director, explained the two items of new business related to requested housekeeping amendments.

A. Discussion of amendment to *TCA* §50-6-118(a)(5) [Requested by Department of Labor and Workforce Development]

Ms. Hughes explained the proposed amendment resolves a conflict between two statutes related to the length of time an employer has to determine whether to accept or deny a workers' compensation claim. This change was requested by Ms. Sue Ann Head at the February 23, 2001 Advisory Council meeting. The Advisory Council voted unanimously to recommend a provision deleting *TCA* §50-6-118(a)(5) in its entirety be added to the "Omnibus Bill".

B. Discussion of amendment to *TCA* §50-6-204(a)(4)(B)(C) [Conflict between codification and Public Chapter 990 language]

Ms. Hughes reviewed the provision of Public Chapter 990, enacted in 2000, related to the requirement of inclusion of a chiropractor in the panel provided to employees who suffer a back injury. As codified, the statute may inadvertently delete the requirement that a member of a self-insurer pools provide a panel choice at all. The Advisory Council voted unanimously to recommend the Joint Committee include language in the "Omnibus Bill" to correct the codification language to assure the intent of Public Chapter 990 is properly codified.

The meeting was then adjourned at 11:20 a.m., subject to the call of the Chair.